IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.148 OF 2005

Akhtar Hasan Rizvi — Appellant
Vs.
Javed Mehmood Ansari & ors. — Respondents

Mr.S.B.Prabhavalkar with Mr.R.R.Kalekar for appellant.
Mr.M.A.Adenwala for Respondent Nos.1 and 2.

CORAM: B.H.MARLAPALLE,J.

June 06, 2005.

P.C.

1. Heard the learned counsel for the respective parties. Admit. Respondents waive service.

1A. The present respondents filed S.C.Suit No.3517 of 2004 in the City Civil Court at Bombay along with Notice of Motion No.3002 of 2004. The said notice of motion came to be disposed of by the trial Court vide order dated 14/12/2004 by protecting the possession of the plaintiff in respect of room nos.6,8 and 10. The trial Court held that the possession of the plaintiffs shall not be disturbed without due process of law. This order has been challenged in the instant appeal.

2. So far as the protection granted in respect of room no.10 is concerned, the appellant has not challenged the same. The challenge in the appeal is only in respect of protection granted in favour of the plaintiffs for room nos.6 and 8. The perusal of the impugned order indicates

that so far as room no.8 is concerned the trial Court has relied upon the letter dated 12/2/1998 issued by the Circle Officer. This letter states that when inspection was undertaken on 12/2/1998 the plaintiffs' father was found to be carrying out commercial activity. In this letter there is no specific mention about the room numbers where the alleged commercial activity was being carried out whereas in the address of the plaintiffs' father room nos.6/8, Madamwadi, Bazar Road is mentioned. Similarly there is a letter dated 10/1/2000 which is issued from the Tahsil office at Andheri and addressed to the plaintiffs' father. This was a letter for carrying out an enquiry but again room nos.6 and 8 is mentioned in the address. So far as room no.6 is concerned the trial Court has referred to the ration card which was earlier in the name of the plaintiffs' father and subsequently renewed on 9/7/2004. The learned counsel for the respondents also relied upon the decision of this Court in the case of Hydroclave System Corporation v. M/s. Jain Hydraulic Pvt.Ltd. reported in **2003 (1) ALL MR 54** and submitted that the discretion exercised by the trial Court in granting certain protection need not be interfered in the facts of this case.

3. Apart from room no.10 on which there is no dispute for granting protection, the prima facie evidence considered by the trial Court in respect of room no.6 does not call for any interference and more particularly on the basis of the ration card renewed. However, the evidence

relied upon for room no.8 cannot be treated to be a prima facie evidence to hold that the plaintiffs were in possession of the said room when the suit was filed and, therefore, there is no justification in granting protection qua room no.8. The other documents relied upon by the plaintiffs have been discarded by the trial Court. The cryptic reasoning given by the trial Court in the impugned order in respect of room no.8 is unsustainable and more particularly because protection for the said room is entirely on the basis of the letter dated 12/2/1998.

4. Hence this appeal succeeds partly. The protection granted in respect of room nos.6 and 10 is hereby confirmed but the protection granted in respect of room no.8 is hereby set aside.

5. It is further clarified that this order will not come in the way of the plaintiffs to apply afresh for maintaining protection in respect of room no.8 by providing better particulars before the trial Court and if such application is moved within a period of two weeks, the same shall be considered on its own merits. The trial of S.C. Suit No.3517 of 2004 is hereby expedited. Needless to mention that the suit will have to be decided on merits and without being influenced by any observations made in this order.

(B.H.MARLAPALLE,J.)